

9 FAM 41.121 Procedural Notes

9 FAM 41.121 PN1 Refusal Procedures

9 FAM 41.121 PN1.1 Visa Either Issued or Refused

(TL:VISA-2; 8-30-87)

A nonimmigrant visa must be issued or refused in all cases once an application is executed. Visa refusals must be based on legal grounds; that is, on the provisions of INA 212(a) or (e), INA 214(b), or INA 221(g).

9 FAM 41.121 PN1.2 Procedures When Alien Is Found Ineligible

(TL:VISA-79; 5-14-93)

When an alien is found ineligible, the consular officer should take the following actions:

a. Inform Alien Orally

(1) Inform the alien orally of the provisions of law on which the refusal is based and explain whether administrative relief is available (Category I cases) or what, if anything, can be done to overcome the refusal (Category II cases).

(2) See 9 FAM 41.121 PN1.2d(1) below concerning Category I cases and 9 FAM 41.121 PN1.2g(1) below concerning Category II cases.

(3) See 9 FAM 41.121 PN1.2e below for guidelines regarding manner of informing alien of refusal.

b. Provide Alien With Written Explanation of Refusal

In all cases in which an alien is refused a nonimmigrant visa under any provision of section 212(a) of the Immigration and Nationality Act, a written notice must be provided to the alien listing the specific provisions of the law under which the alien is ineligible for a visa. Prepare and sign an appropriate form letter [see section 9 FAM 41.121 Exhibit I DSL-1075 or section 9 FAM 41.121 Exhibit II Form OF-194] explaining the refusal and hand it to the applicant together with all documents not pertinent to the refusal or indicating possible ineligibility. A written refusal letter is optional in the case of a refusal not based on section 212(a) of the INA.

c. Note Refusal on Form OF-156

On the top right-hand portion of page 1 of Form OF-156, note the sections of INA under which the visa was refused and the date. In the blank spaces at the top of page 1 and the lower left side of page 2, which are reserved for the interviewing officer's use, the reasons for the refusal, reference to any Form OF-194, Refusal Letter and Refusal Worksheet [see section 9 FAM 41.21 Exhibits I] on file (if applicable), and notations regarding subsequent submission of evidence by the alien are to be entered.

d. Prepare Refusal Worksheet, Form OF-194, in Category I Case

(1) Prepare the second page of Form OF-194 [see section 9 FAM 41.121 Exhibit II) for all Category I refusals. Category I includes cases under INA 212(a)(1), (2), (3), (6) or (8). Form OF-194 need not be completed for refusals that do not come within Category I, but Form DSL-1075 must be prepared in all other Category II cases which come under sections 212(a)(4), (5), (7) or (9).

(2) The completed refusal work sheet should include:

(a) Internal data regarding the reasons behind refusal;

(b) Reference to relevant classified documents;

(c) Data regarding review of the refusal within the office; and

(d) Notations regarding documents subsequently submitted to overcome the refusal.

e. Initiate Internal Review of Refusal

To maintain the highest professional standards of adjudication of nonimmigrant visas, and to ensure uniform and correct application of the law and regulations, the review of all nonimmigrant visa refusals is a vital part of the visa process. The consular officer must send the refusal file to the designated supervisory officer, who shall review the case and either confirm or disagree with the refusal, indicating the decision on the back of Form OF-194 for Category I cases, or directly on Form OF-156 in the case of Category II refusals. 22 CFR 41.121(c) specifies that a refusal is to be reviewed without delay, that is, on the day of the refusal or as soon as is administratively possible. If the reviewing officer does not concur in the refusal, that officer may either refer the case to the Department for an advisory opinion, or assume personal responsibility for the case. The reviewing officer should discuss the case fully with the refusing officer before taking either action. If the reviewing officer reverses the refusal, the applicant should be promptly notified.

f. Enter Refusals in Visa Lookout System

(1) All Category I refusals must be entered into the visa lookout system.

(2) All on-line posts must enter 214(b) refusals into the visa lookout system. [See 9 FAM PART IV for procedures.]

g. File Relevant Material in Post Refusal File

(1) Form OF-156 is to be filed in the consolidated visa card file, or at automated posts Category II refusals may be file chronologically. Form OF-194 and any other items relevant to the refusal are to be filed in the Category I refusal file, or (where applicable) Category II refusal file. Category I refusals are listed in 9 FAM 41.121 PN1.2(d)(1). All other refusals of nonimmigrant visas fall under Category II. These include refusals under INA 212(a)(4), (5), (7), and (9), INA 214(b), INA 212(e), and INA 221(g). Consult the Records Management Handbook for instructions on retention and destruction.

(2) Posts which desire to retain Category II refusal files for longer than the specified time must request specific permission from the Department (CA/VO/F/P) citing the reasons (usually high fraud rates) for the request.

h. Not Disclose, in Certain Cases, Which Specific Paragraph of INA 212(a) is Basis of Refusal

(1) The manner in which visa applications are refused can be very important in relations between the post and the population of the host country. Consular officers must be careful not to appear insensitive.

(2) The consular officer should aim for a measured, sympathetic but firm style which will convince the ineligible applicant that the treatment accorded was fair. In a refusal, the consular officer should refer to pertinent statements of the applicant, written or oral. Refusals on the serious grounds of INA 212(a) are often easier to handle than those based on less serious grounds. The officer may cite a conviction, a medical report, a false document, a previous refusal, or the like, as the basis of the refusal. Such objective grounds, when combined with a simple and clear explanation of the law, should satisfy most applicants.

(3) Refusals under INA 214(b) are much more numerous and, in many ways, much more difficult. Consular officers should rely primarily on the interview itself and only minimally on the supporting documentation. The refusal should be based on the law and be as impersonal as possible. However, officers should not be surprised if a refusal based on the ground the applicant is an intending immigrant appears to be a personal judgment to the applicant.

(4) Some officers understandably are, or try to be, very sympathetic, but that can create problems. If a tone of authority is not evident, the applicant may misunderstand the officer's intentions and believe the visa might still be issued. (In some societies, such a situation might be interpreted as an invitation to a bribe.)

9 FAM 41.121 PN1.3 Indicating Refusals in Passports

(TL:VISA-79; 5-14-93)

a. All posts should place a stamp in passports to indicate when a visa application is received and refused. The purpose of the stamp is for record keeping purposes, i.e., it will help the post locate chronologically filed applications when the applicant reapplies for a visa.

b. The stamp should be ½ inch in height and contain the following text:

U.S. (Embassy/Consulate General/Consulate)

(Name of Post)

Application Received on_____.

c. The term "Application Received" with no other stamp in the passport will indicate that a visa was refused. A passport with an application received stamp and subsequently issued visa indicates that the refusal was overcome.

d. The following procedure should be used:

(1) The stamp should be placed on the back page of the passport which corresponds to the front page containing biographic data and/or photograph. Any attempt to tear out the page with the stamp should normally ruin the passport.

(2) The date should be entered with indelible ink or with a date stamp.

(3) If an applicant returns every few days for a new interview but is still considered ineligible, the passport need not be stamped each time. If a 3 month period has elapsed since the last application, then the passport should be stamped again.

9 FAM 41.121 PN1.4 Reactivation of Case

(TL:VISA-79; 5-14-93)

a. Applicant Not to be Encouraged if Eventual Issuance Unlikely.

If it appears to the consular officer that eventual issuance of a visa is unlikely, care should be taken not to encourage the applicant to undertake useless effort and expense to reactivate the case. 7 b. Reconsideration after Reviewing Officer Agreement to Refusal Based on INA 212(a), 212(e), or 214(b)

If an applicant who has been refused under INA 212(a), 212(e), or 214(b) requests reconsideration of the refusal, the applicant must complete a new Form OF-156 and resubmit all pertinent documents. If the refusal is reconfirmed, the new refusal should be noted on the new Form OF-156, the previous refusal file updated, and the new refusal reported in the monthly report. 7 c. Reconsideration After Reviewing Officer Agreement to Refusal Under INA 221(g).

An applicant who has been refused under INA 221(g) need not complete a new Form OF-156. When the requested documentation is submitted by the applicant or the necessary clearances received, the original Form OF-156 is to be retrieved from the consolidated visa card file, the new information noted, and the visa either issued or refused.

9 FAM 41.121 PN2 Procedures in Quasi-Refusal Cases

9 FAM 41.121 PN2.1 Alien Informed of Apparent Ineligibility

(TL:VISA-2; 8-30-87)

If an alien who has not filed a formal application inquires about eligibility for a visa, and it appears from statements made or evidence presented that the alien would be ineligible, the pertinent section of the law should be pointed out to the alien. The alien is to be informed that the evidence and general circumstances described appear to bring the case under the cited provision of INA, but that a decision to issue or refuse a visa can be made only after an application has been executed and all the required documentation submitted.

9 FAM 41.121 PN2.2 Quasi-Refusal Entered Into CLASS

(TL:VISA-79; 5-14-93)

If, after being informed of apparent ineligibility, the alien decides not to make formal application, the situation does not constitute a formal refusal and it should not be reported as such by the post. A lookout entry, however, may be appropriate. If so, the name of the alien should be entered in the CLASS as indicated in 9 FAM PART IV.

9 FAM 41.121 PN3 Procedures in Cases Deferred for Advisory Opinions or for Other Reasons

(TL:VISA-79; 5-14-93)

When, as a result of the visa interview, the consular officer decides that an advisory opinion is necessary, the officer must first refuse the visa. The officer should not provide the applicant with a specific ground for refusal even if the officer believes there is substantial evidence for this. Instead, the officer should record the refusal as being based on INA 221(g). [See 9 FAM 41.121 PN1.4 below.] The file copy of the request for advisory opinion is to be attached to the documents retained and filed in the post's A-Z file. Documents submitted are not to be returned until final action is taken. The post should use a tickler system as a reminder to send the Department a follow-up request for a response after a reasonable period of time has elapsed. If it is later determined on the basis of the Department's advisory opinion that the alien is ineligible under a provision of INA 212(a), 212(e), or 214(b), the alien should be formally refused under the pertinent section. Under no circumstances should a final resolution of the question of eligibility be made before the Department's advisory opinion is received. [See section 9 FAM 40.6 N1.2.] This same procedure is to be followed, that is, a refusal of the visa and an annotation of Form OF-156, in other situations where the alien has formally applied, but a final determination is deferred for additional evidence, further clearance, name check, or some other reason.

9 FAM 41.121 PN4 Cases Involving Classified Information Reported to Department

(TL:VISA-25; 7-21-89)

See 9 FAM PART IV Appendix A for required reports.

9 FAM 41.121 PN5 Required Reports of Nonimmigrant Visas Issued and Refused

(TL:VISA-25; 7-21-89)

See 9 FAM PART IV.